

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION

CHERIE C. WHITEHURST,

Plaintiff,

v.

Case No. 6:19CV00010

BEDFORD COUNTY SCHOOL BOARD, et al.

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTION TO  
HEARING ON MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Defendants Bedford County School Board ("School Board") and Dr. Douglas R. Schuch, by counsel, in response to the Plaintiff's Objection to Hearing on Defendant's Motion to Dismiss First Amended Complaint, state as follows.

1. The Plaintiff has objected to this Court holding a hearing on the Defendants' Motion to Dismiss First Amended Complaint on the basis of a short delay in the scheduling of such hearing, which the Plaintiff asserts will impact her initial expected disclosures.

2. Local Rule 11(b) provides that "Unless otherwise ordered, a motion is deemed withdrawn if the movant does not set it for hearing (or arrange to submit it without a hearing) within 60 days after the date on which the motion is filed. In accordance with Federal Rule of Civil Procedure 78(b), the Court may determine a motion without an oral hearing." (emphasis added). Accordingly, the Court retains the authority to consider the motion and to hear oral argument on the motion. See e.g. Hawkins v. Fishbeck, 301 F. Supp. 3d 650, 661 (W.D. Va. 2017) (granting, in part, defendant's motion to compel arbitration over the objection of the plaintiff who had argued, unsuccessfully, that the defendant failed to schedule a hearing within 60 days).

3. The Plaintiff has not been prejudiced by the timing of this hearing. The trial of this matter is set for April 22, 2020, more than seven months after the date of the scheduled hearing. In the event that this matter is not dismissed in its entirety on the Defendants' Motion to Dismiss, there is ample time prior to trial for the Plaintiff to file her expert disclosures and otherwise prepare her case.

4. It is noteworthy that the Court initially set the deadline for Plaintiff's initial expert disclosure for August 26, 2019 (or 75 days from the date of the Court's Pretrial Order). Counsel for the Defendants consented to Plaintiff's request, made at the Rule 26(f) conference, to extend the expert disclosure deadlines such that Plaintiffs' deadline for her initial expert disclosure to September 24, 2019 (or 105 days from the Pretrial Order). See Joint Report of Rule 26(f) Conference, Dkt. 13. Counsel for the Defendants does not object to a further extension of the expert disclosure deadlines as proposed by Plaintiff.

5. Counsel for Defendants respectfully requests that the Court conduct the hearing, as scheduled on September 13, 2019.

WHEREFORE the Defendants Bedford County School Board and Dr. Douglas R. Schuch respectfully request that the Court overrule the Plaintiff's Objection and enter an Order dismissing the First Amended Complaint with prejudice and granting them such further relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED,

BEDFORD COUNTY SCHOOL BOARD  
AND DR. DOUGLAS R. SCHUCH

By Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of September, 2019, I have electronically filed the foregoing using the CM/ECF system, which will automatically send email notification of such filing to counsel of record as follows:

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